

**Testimony of Thea M. Lee
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**before the
House of Representatives Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection**

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**Hearing on the
Dominican Republic-Central American Free Trade Agreement**

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify today on behalf of the thirteen million working men and women represented by the AFL-CIO. U.S. trade policy in general, and DR-CAFTA in particular, are of enormous interest and importance to our members and to America's workers.

In our view, CAFTA provides precisely the wrong answers to the challenges faced in Central America and the United States. CAFTA represents a failed model that will likely exacerbate poverty and inequality in Central America, while further eroding good jobs and wages at home. At the same time, its excessive protections for multinational corporations will undermine the ability of governments to protect public health, strong communities, and the environment.

Mr. Chairman, members of the subcommittee, we ask you to reject CAFTA and urge the administration to renegotiate this deeply flawed deal.

Any vote on CAFTA must take into account the broader economic reality that we are facing today. Our trade deficit hit a record-shattering \$617 billion last year, we have lost close to three million manufacturing jobs in the last four years, and average wages have not kept pace with inflation this year – despite healthy productivity growth. Offshore outsourcing of white-collar jobs is increasingly impacting highly educated, highly skilled workers – leading to rising unemployment rates for engineers and college graduates. Together, record trade and budget deficits, unsustainable levels of consumer debt, and stagnant wages paint a picture of an economy living beyond its means, dangerously unstable in a volatile global environment.

Some CAFTA proponents have argued that opening Central America's markets to U.S. goods will boost sales for U.S. producers, creating high-paying export-related jobs at home. Proponents argue that this will in turn help close the U.S. trade deficit and allow U.S. companies to compete more effectively with China and other countries.

However, our experience under NAFTA demonstrates that the opposite is likely to occur. As Republican Senator Olympia Snowe said recently in the Senate Finance Committee hearing on CAFTA, NAFTA has cost U.S. workers nearly one million jobs and job opportunities (based on the deterioration in our trade balance with our NAFTA partners).

NAFTA was also supposed to open markets for American goods and services, creating high-paying jobs at home and prosperity abroad. Instead, in eleven years, the U.S. trade deficit with Canada and Mexico ballooned to twelve times its pre-NAFTA size, reaching \$111 billion in 2004. Imports from our NAFTA partners grew more than \$100 billion faster than our exports to them, displacing workers in industries as diverse as aircraft, autos, apparel, and consumer electronics. This occurred because U.S. companies did not take advantage of the easier access to the Mexican market to export finished consumer goods to Mexico; instead, they shifted production out of the United States to Mexico, exporting parts and capital goods and importing finished products. The net impact of these production shifts was a loss of good jobs in the United States.

Those workers whose jobs were not eliminated also suffered. Employers used the leverage of their new mobility and rights under NAFTA to crush union organizing drives and win concessions at the bargaining table, driving down wages and working conditions for American workers. According to researchers at Cornell University, the incidence of employers' threats to close and relocate factories grew under NAFTA. And these intimidation tactics are very effective: workers are half as likely to succeed in organizing a union when their employers threaten to move jobs abroad.¹

NAFTA simply did not deliver stronger net exports or a competitive advantage for U.S.-based companies and workers, and there is little reason to believe that CAFTA will be any different. Like NAFTA, the attraction of Central America for multinational corporations is not its consumer market, but its low-paid and very vulnerable workforce.

The incremental market access for U.S. producers under CAFTA is quite small, as the consumer markets in the DR-CAFTA countries are not very significant. Many U.S. exports to the region are intermediate inputs, which are assembled in the region and then exported back to the United States.

And Central American assembly production is not the answer to staying competitive with China. The competitive problems we face with China require a direct solution which addresses the Chinese government's currency manipulation, illegal subsidies, and egregious repression of workers' rights and democratic rights head on.

¹ Kate Bronfenbrenner, "The Effects of Plant Closing or Threat of Plant Closing on the Right of Workers to Organize," Dallas, Texas: North American Commission for Labor Cooperation; 1997. Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility On Workers, Wages, and Union Organizing," Commissioned research paper for the U.S. Trade Deficit Review Commission; 2000.

Getting slightly better access to a small market will not come close to solving those problems.

Some CAFTA proponents have made the desperate argument that CAFTA is the only way to lift Central America out of poverty. Again, we need only examine NAFTA's dismal track record to dispel this myth. Since NAFTA was implemented eleven years ago, real wages in Mexico have actually fallen, the number of people in poverty has grown, and the number of people migrating illegally to the United States to seek work has doubled. Trade liberalization in agriculture displaced nearly a million rural small farmers, swamping the fewer jobs created in the export processing sectors. Many in Mexico who supported NAFTA eleven years ago have now turned into ardent opponents.

CAFTA is likely to have similar impacts in Central America, especially since CAFTA does not dramatically increase access to the U.S. market for the Dominican Republic and Central America. The key impact on the rural poor – the majority of the population in many of the countries – will be increased competition with much more efficient U.S. agribusiness.

For industrial employment to be a reliable route out of poverty, workers must earn decent wages, have the right to form independent unions, and enjoy basic workplace protections and labor rights. Few workers in Central America today can exercise their internationally recognized rights to form unions and bargain collectively. Anti-union violence is common, and employers routinely fire workers attempting to exercise these rights, while governments fail to act. Far from addressing or rectifying these concerns, CAFTA actually weakens the labor rights conditions included in current U.S. trade programs, leaving Central American and Dominican workers more vulnerable than ever. I will address CAFTA's inadequate labor rights provisions in more detail later in this testimony.

CAFTA Provisions Favor Multinational Corporations Over Workers, Communities, and National Governments

CAFTA strengthens protections for multinational corporations, forcing changes in intellectual property protection regimes that threaten public health, giving corporations new rights to sue governments over regulations they deem too costly or inconvenient, and limiting the ability of future legislators to place conditions on government procurement. This hurts Central America's prospects for future development, just as it weakens state legislators and erodes wages and jobs here at home.

The lopsided tilt toward corporate interests helps to explain why CAFTA is so unpopular, both here in the United States and throughout Central America. A recent poll by Americans for Fair Trade found widespread opposition to CAFTA, with 74% of respondents saying they would oppose the pact if it caused job losses, even if it also reduced consumer prices. In Central America, tens of thousands of workers, farmers, small-business owners, and other activists have taken to the streets to voice their

vehement opposition to the deal and to the lack of transparency in the negotiation process.

The Bush administration and Central American governments have prioritized multinational corporate interests at the expense of ordinary citizens. Right now in Guatemala, the rights of people who need inexpensive medications are being traded away in favor of CAFTA's business interests. Pharmaceutical companies have already pressured Guatemala to stop allowing inexpensive drugs in stores. CAFTA imposes a five-to-ten year waiting period on generic drugs. The humanitarian organization, Doctors Without Borders, has said that these provisions in CAFTA could make newer medicines unaffordable.

CAFTA's Workers' Rights Provisions Unacceptably Weak

At the same time, despite the overwhelming evidence that Central America's workers are routinely abused, CAFTA spectacularly fails to address this problem. CAFTA's single enforceable workers' rights provision requires only that countries enforce their own labor laws—laws that Human Rights Watch, the International Labor Organization and even our own State Department have documented as failing to meet international standards. And CAFTA contains no enforceable provision preventing countries from weakening or even eliminating their labor laws entirely.

Not one country included in the CAFTA comes close to meeting a minimum threshold of respect for the ILO's core labor standards: freedom of association, the right to organize and bargain collectively, and freedom from child labor, forced labor, and discrimination. In Central America, maquiladora employers pay a workforce made up disproportionately of young women poverty wages to labor for long hours in unsafe conditions. When these workers try to organize to try to win a voice at work, they face intimidation, threats, dismissal, and blacklisting.

Labor laws in Central America uniformly fail to protect basic workers' rights, and deficiencies in the laws have been repeatedly criticized by the International Labor Organization (ILO), the U.S. State Department, and independent human rights organization for many years.² Despite this criticism, these flaws persist today. The ILO, in its 2003 and 2004 reports on Central American labor laws, identified no fewer than 27 key deficiencies in the laws with respect to freedom of association and the right to organize and bargain collectively. Amazingly, the U.S. Trade Representative and Central American countries continue to cite these reports as evidence that laws in the region largely meet ILO standards – a gross mischaracterization of the reports themselves. And

² Such reports include: "Fundamental Principles and Rights at Work: A Labour Law Study - - Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua," International Labor Organization, 2003; "Fundamental Principles and Rights at Work: A Labour Law Study - - Dominican Republic," International Labor Organization, 2004; "2004 Country Reports on Human Rights Practices," U.S. Department of State, 2005; "2004 Annual Survey of Violations of Trade Union Rights," International Confederation of Free Trade Unions, 2004; and "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights," Human Rights Watch, 2003. A summary of these reports is available in "The Real Record on Workers' Rights in Central America," AFL-CIO, April 2005.

even these reports, with all the deficiencies they identify, omit some flaws that the ILO itself had identified with regard to these countries in earlier observations because of the reports' limited scope.

A review of the ILO reports and other ILO observations, along with U.S. State Department reports and independent analyses by human rights groups, reveals a wide array of loopholes, gaps, and deficiencies in labor laws in the region. On issues including penalties for anti-union discrimination, employer interference with workers' organizations, obstacles to union registration, restrictions on the right to organize above the enterprise level, restrictions on the rights of temporary employees, onerous requirements for trade union leadership, limits on the activities of federations and confederations, and limits on the right to strike, labor laws throughout the region fail to meet the minimum standards enumerated by ILO core conventions. The only country to actually reform any of its laws in these areas during the CAFTA negotiation process was Nicaragua; but some gaps in the law remain even there. In every other country major deficiencies identified by the ILO remain on the books today. In fact, some countries have actively weakened their labor laws during the CAFTA negotiations: Guatemala's Constitutional Court overturned key elements of major labor law reforms, while the Costa Rican government introduced legislation to weaken worker protections.

Employers take advantage of these weaknesses in the labor law to harass, intimidate, and fire workers who dare to organize an independent union. Employers refuse to bargain with legitimate worker representatives, and have most strikes declared illegal. Even where employers are flagrantly in violation of the law, they enjoy near total impunity in many of these countries. The result is a climate of fear, insecurity, and even physical danger for workers in the region who try to exercise their most basic rights on the job.

As violation after violation of workers' rights accumulate, and as governments refuse to improve their laws or enforce those that do exist, the very institutions of independent trade unions and collective bargaining founder. Trade union density in Central American countries is minimal: 7 percent in Honduras, 5 in El Salvador, 3 in Guatemala. In El Salvador, no independent trade unions have been registered in the past four years. The most recent denial came this year, when the Ministry of Labor found that port workers did not meet the legally required minimum number to form a union, as a result of the fact that their employer had fired most of the founding members of the union in direct retaliation for their organizing activities.

There are only two collective bargaining agreements in force in Guatemala's maquiladoras – zero in El Salvador's. In Costa Rica from 1999 to 2004, for every employer that negotiated a collective bargaining agreement with a legitimate trade union, more than fourteen employers negotiated direct arrangements with employer-dominated solidarity associations. In Guatemala, 45 incidents of threats against trade unionists were reported to the government in 2004 – only one conviction was achieved.

In the face of these inadequate labor laws, CAFTA only requires that countries enforce the labor laws they happen to have. Obligations to improve one's labor laws, to meet ILO standards, and not to derogate from or waive laws in the future are all completely unenforceable under CAFTA. Thus a country can maintain its laws far below ILO standards, weaken its laws even further in the future, and face no consequences under CAFTA. As the discussion above demonstrates, this is not just a theoretical possibility in Central America – it is the reality that workers live with every day.

CAFTA Labor Provisions A Step Back From Jordan FTA and GSP

CAFTA's failure to include an enforceable requirement that labor laws meet ILO standards represents a step backwards from the labor rights provisions of the U.S.-Jordan Free Trade Agreement. The Jordan agreement enjoyed broad support from labor unions in the U.S. and Jordan, and passed the U.S. Congress unanimously in 2001. The Jordan agreement allows each one of its labor rights obligations to be brought up under the agreement's dispute settlement and enforcement mechanism, including provisions committing countries to meet ILO standards. In contrast, CAFTA excludes the vast majority of its labor rights obligations from the accord's dispute settlement and enforcement mechanisms, and only the requirement that countries enforce their own labor laws is subject to dispute settlement and enforcement.

CAFTA also backtracks from the Jordan agreement by giving labor rights second-class status within the agreement's dispute settlement and enforcement apparatus. In the Jordan FTA, the dispute settlement and enforcement measures that apply to the agreement's labor provisions are identical to those that apply to the agreement's commercial provisions, and can include fines or sanctions. Under CAFTA, only violations of the agreement's commercial provisions can lead to sanctions or punitive fines sufficient to compensate the harm caused by the violation. Violations of the agreement's labor obligation must be remedied through the assessment of a non-punitive fine, and that fine is capped at \$15 million regardless of the harm caused by the violation.

Perhaps most disturbing is the fact that CAFTA's rules on workers' rights are actually weaker than the current labor conditions that apply to Central American countries under our unilateral trade preference programs, the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI). CAFTA's labor chapter backtracks from the labor standards in GSP and CBI, and the agreement eliminates enforcement tools currently available in the unilateral programs.

- The GSP requires countries to have taken or be “taking steps to afford internationally recognized worker rights,” while the CBI instructs the president to consider “the extent to which the country provides internationally recognized worker rights” when granting preferential market access under the program. These rules enable workers to complain about the inadequacy of national labor laws, not just about the government's failure to enforce the law. CAFTA, on the other hand, only requires countries to enforce the labor laws they happen to have, no matter how weak those laws are now or become in the future.

- The GSP includes a public petition process for the removal of trade benefits. The AFL-CIO and other labor rights advocates have used the process, in conjunction with unions in Central America, to bring public pressure on Central American governments to improve labor rights. Even when the U.S. government exercises its discretion to reject meritorious GSP petitions, the public forum provided by the petition process can help focus public attention on workers' rights abuses and pressure governments to reform. CAFTA contains no direct petition process for workers – enforcement can only happen through government-to-government disputes.
- The GSP and CBI directly condition market access on respect for international labor rights. While preferential benefits are rarely withdrawn under the programs, the credible threat of reduced trade benefits has successfully changed government behavior. In addition, petitioners have been able to tailor request for withdrawal to specific sectors and producers responsible for workers' rights violations, helping to create a specific incentive for employers to respect workers' rights. CAFTA, on the other hand, makes it extremely difficult to withdraw trade benefits for workers' right violations. Even if a government has been found in violation of CAFTA's labor provisions, it can continue to enjoy full market access under the agreement as long as it pays a small, capped fine to finance labor enforcement activities. The fine in no way penalizes producers for violations of workers' rights, and exerts little pressure on governments, who can reduce their labor budgets by an amount equal to the fine and avoid spending the fine on projects with political sensitivity such as labor law reform.

The only tool that has helped create the political will to reform labor laws in Central America in the past is our unilateral system of trade preferences. While the labor rights provisions of these programs are not perfect, they have led to some improvements in labor rights in the region. In fact, nearly every labor law reform that has taken place in Central America over the past fifteen years has been the direct result of a threat to withdraw trade benefits under our preference programs.

Even the United States Trade Representative (USTR) touts the reforms that have been made to Central American labor laws as a result of GSP petitions. USTR argues that the reforms demonstrate Central American governments' commitment to workers' rights, and thus argue for approval of CAFTA. Quite to the contrary, the reforms demonstrate that governments in the region rarely undertake labor law improvements without outside pressure – pressure that will no longer be applied if CAFTA is ratified.

- The U.S. government accepted a GSP workers' rights petition against Costa Rica for review in 1993, and Costa Rica reformed its labor laws later that year.
- The Dominican Republic reformed its labor laws in 1992 in response to a GSP petition on workers' rights.

- El Salvador was put on continuing GSP review for workers' rights violations in 1992, and the government reformed its labor laws in 1994.
- Guatemala reformed its labor laws in response to the acceptance of a 1992 GSP petition, and when their case was reopened for review in response to a 2000 petition they again reformed their labor laws in 2001.
- Nicaragua's GSP benefits were suspended in 1987 for workers' rights violations, and it reformed its labor laws in 1996.

The GSP process has also been helpful in addressing enforcement and rule-of-law problems in the region. Too often, these patterns of violation are the result not just of limited resources, but of insufficient political will on the part of Central American governments. GSP cases have helped create that political will. As the result of a 2004 petition on El Salvador, for example, the Salvadoran government finally enforced a reinstatement order for union activists that had been locked out for three years. All appeals to national mechanisms in the case had been fruitless, and the employer was in outright defiance of a reinstatement order from the nation's Supreme Court. The last independent union granted legal registration in El Salvador was only registered after appeals to the Salvadoran Supreme Court, the ILO, and a GSP petition.

Central American countries need a trade regime that will improve compliance with fundamental workers' rights. As long as independent trade unions are thwarted, collective bargaining avoided, and the right to strike repressed, workers will be unable to win a voice at work and negotiate with their employers for decent working conditions and wages that reflect the true value of their production. Trade rules must ensure that governments protect fundamental workers' rights, and require that the companies who take advantage of the new rights and mobility that trade agreements provide be held accountable for their treatment of workers.

CAFTA fails this test. Rather than tie the incentives that additional market access provides to required improvements in workers' rights, CAFTA does exactly the opposite. While granting expanded and permanent market access to Central American countries, CAFTA actually reduces the labor rights conditions those countries are required to fulfill under current trade programs. This failure is particularly egregious in the Central American context – in countries where labor laws fall far short of minimum international standards, where governments have a record of indifference towards workers' rights and hostility towards trade unions, and where the only tool that has proven successful in improving workers' rights has been the threat of the withdrawal of trade benefits.

It is time for policymakers to take an honest look at our trade policy and the impact it has had on workers and communities at home and abroad, and start revising the rules that govern trade. The American labor movement, along with our brothers and sisters in Central America, has made substantive and thoughtful proposals on what changes need to

be made to our trade policies.³ We recognize that trade has the potential to spur growth and create jobs – but to deliver on these promises, we need to get the rules right. Unfortunately, CAFTA negotiators ignored our proposals.

As a result, we are forced to oppose CAFTA. We are working together with unions, environmentalists, family farmers, bishops, women's groups and many others in the U.S. and Central America to stop CAFTA and to build a better way to trade. Only by rejecting CAFTA can we begin a real dialogue on the new kinds of trade rules we need to create good jobs, stimulate equitable and sustainable economic development, and support strong democratic institutions.

In sum, CAFTA grants multinational companies that ship U.S. jobs overseas the following rewards: greater access to the U.S. market, more freedom to violate workers' rights with impunity, and the ability to challenge government regulations enacted in the public interest. CAFTA's rules on investment, government procurement, intellectual property rights, and services create new rights for multinational corporations, but the agreement actually weakens existing protections for workers' rights, leaving the interests of ordinary working men and women out in the cold.

Members of the subcommittee, I will close with these thoughts. The U.S. economy continues to break records, but not in ways that help working people. The all-time high U.S. trade deficit is not an abstract issue; it shows up every day as working men and women see their plants close, are asked to train their own overseas replacements or are asked to swallow wage and benefit cutbacks that affect their families' lives in hundreds of ways. Entire communities suffer the consequences of failed trade agreements. We urge the Congress to reject CAFTA and begin work on just economic and social relationships with Central America and the Dominican Republic.

³ See "Labor Movement Declaration Concerning The United States-Central America Free Trade Agreement," San Jose, Costa Rica, November 18, 2002. This declaration was signed by the labor federations of the United States, Guatemala, Nicaragua, Costa Rica and El Salvador. It is reprinted in, "The Real Record on Workers' Rights in Central America," AFL-CIO, April 2005.